IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8395 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARJUNBHAI PANCHABHAI HIRANI

Versus

MUNICIPAL CORPORATION OF RAJKOT

Appearance:

MR AR THACKER for the Petitioner.

MR RM CHHAYA for the Respondents.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 11/08/2004

ORAL JUDGEMENT

The present petition has been preferred against the judgment and order dated 22nd June, 2004 in Regular Civil Appeal No. 52 of 2001 passed by the Joint

District Judge, Rajkot, whereby the appeal preferred by the petitioner has been dismissed and the order dated 16th October, 2001 passed by the Deputy Commissioner (R)and Competent Officer, Rajkot in Competent Case No. 1 of 2001 filed under Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (for short "the Act" has been upheld.

2. The learned counsel for the petitioner mainly submitted that it is not correct to say that the period of lease is over on 31st December, 1999. On the contrary, there was a recommendation vide resolution bearing no.165 passed by the respondent Corporation on 1st April, 1991 for giving lease of the disputed premises to the petitioner for eight years. But thereafter also, the respondent authority is collecting rent from the petitioner and therefore, it cannot be said that the lease is over on 31st December, 1999. It is also averred by the learned counsel for the petitioner that it was resolved by the Standing Committee of the respondent Corporation that if the Corporation has no need of the disputed premises, then the lease period of the petitioner should be extended. It is submitted by the learned counsel for the petitioner that the Corporation is never in need of the disputed property for its own use, but the respondent Corporation has also published a tender to lease out the disputed premises. Thus, if the said property is to be given on lease to some other person, then as per the resolution passed by the respondent Corporation, the respondent Corporation is duty bound to extend the period of lease of the petitioner. It is also submitted by the learned counsel for the petitioner that the petitioner has agreed to pay higher amount of rent as agreed by and between the parties. Nonetheless, the petitioner is ready and willing to pay still higher amount to the respondent Corporation. This aspect of the matter has not been at all appreciated by the Deputy Commissioner (R) and Competent Officer, Rajkot as well as by the learned Joint District Judge, Rajkot. Therefore, the orders passed by the Competent Authority as well as by the learned Joint District Judge, Rjkot deserve to be quashed and set aside.

3. The learned counsel for the respondents submitted that the lease period for the disputed property is over on 31st December, 1999. Notice was also issued in this behalf by the respondent authority and despite this fact, the petitioner has not taken any care to hand over the possession of the suit premises. It is averred by the learned counsel for the respondents that in fact,

only for eight years, lease period was extended from 1st April, 1991 and therefore, lease is already over in the year 1999. There is some manipulation in the figures by the present petitioner in the documents and has wrongly shown the period of lease commencing from 1.4.1991 and remaining in force upto 31st December,2001. In fact, vide resolution no.165 passed by the Standing Committee of the respondent Rajkot Municipal Corporation, the period of lease was only for eight years from 1st April, 1991. It is also submitted by the learned counsel for the respondents that clause 4 of the Resolution no.165 dated 8th May, 1991 which pertains to extension of the lease is only suggestive in nature, but the fact remains that there is no extension of lease of the disputed premises and hence, the petitioner has no right and authority to retain the possession of the premises of the respondent Corporation. A notice was also issued by the respondent Corporation to the petitioner to vacate the premises and despite service of notice, the respondent has not handed over vacant possession of the disputed premises to the Corporation. The said notice was given on 15th January, 2000 and therefore, Rajkot Municipal Corporation initiated proceedings under the Act which has resulted into the order dated 16th October, 2004 passed by the Competent Officer (R), Rajkot in Competent Case no.1 of 2000, whereby the petitioner was directed to hand over vacant possession of the suit land to the respondent Corporation.

4. The learned counsel for the respondents further submitted that by no stretch of imagination, much less by reading resolution no. 165 of the Standing Committee of the respondent, it can be said that it is a permanent obligation of the respondent Corporation to go on extending the period of lease forever and always. In fact, this reading is absolutely false and wrong and it is a misinterpretation of the said resolution of the Standing Committee of the respondent Corporation. The language used in the said Resolution is suggestive in nature and in fact, the respondent has already published a tender and the highest tenderer is ready and willing to pay the rent of Rs. 75000/- per month.

5. I have perused the papers of the case as well as the order passed by the Competent Officer and the order passed by the appellate court. Looking to the facts and circumstances of the case, I am of the opinion that there is no error in the order dated 22nd June, 2004 passed by the learned Joint District Judge, Rajkot in Regular Civil Appeal No. 52 of 2001, much less, an error

apparent on the face of the record. There is no perversity in the said order. On the contrary, the order passed by the appellate court is true and correct and in consonance with facts and law, especially keeping in mind the fact that there is no extension of lease after the lease period in question is over. The said lease was given vide resolution no.165 of the Standing Committee of the respondent Corporation for eight years commencing from 1st April, 1991. Moreover, a notice was also issued by the respondent Corporation for on 15th January, 2000. From the plain reading of the resolution no. 165 passed by the Standing Committee of the respondent Corporation, I am of the opinion that it cannot be said that the respondent authority is duty bound to extend the lease period for ever and always. The above resolution for extension of the above referred lease is suggestive in nature. It is not obligatory on the part of the respondent Corporation to compulsorily extend the lease period. Hence, I am in full agreement with the reasons referred to in the judgment passed by the appellate court in Regular Civil Appeal No. 52 of 2001, especially the reasons referred to in paragraphs 7 and 8 of the judgment. Therefore, there is no error in the order dated 16th October, 2001 passed by the Competent Authority, much less an error on the face of the record. On the contrary, the order passed by the Competent Officer is absolutely in consonance with facts and law. I therefore, see no reason to take any deviation from the conclusions arrived at by the Competent Officer in passing the order dated 16th October, 2001 in Competent case no.1 of 2004 as well as the judgment of the learned Joint District Judge, Rajkot. There is therefore, no substance in this petition. In the result, the petition is dismissed in limine. Notice is discharged with no order as to costs.

6. After the dictation of the above judgment, the learned counsel for the petitioner submitted that the petitioner has been using the said premises since long and therefore, time of six months may be granted to the petitioner to vacate the premises in question.

7. The learned counsel for the caveator-respondent resisted aforesaid request of the learned counsel for the petitioner and submitted that however, if at all this Court grants any time to the petitioner to vacate the premises and hand over possession to the respondent Corporation, then the petitioner should be directed to file an undertaking before this Court to the effect that he shall hand over

vacant possession of the disputed premises within prescribed time limit that may be granted by this Court.

8. Looking to the aforesaid request made on behalf of the petitioner, and looking to the peculiar facts and circumstances, the petitioner is granted time of 60 days from today to vacate the disputed premises, subject to the condition that the petitioner shall file an undertaking before this Court within two weeks from today to the effect that he shall hand over vacant and peaceful possession of the disputed premises to the respondent within a period of 60 days from today.

(D.N.Patel,J)

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